

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6589

BILL NUMBER: HB 1437

NOTE PREPARED: Mar 11, 2004

BILL AMENDED: Mar 4, 2004

SUBJECT: Various Corrections Issues.

FIRST AUTHOR: Rep. Crawford

FIRST SPONSOR: Sen. Long

BILL STATUS: Enrolled

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. It creates a forensic diversion program to provide community treatment and mental health and addiction services for offenders suffering from mental illness or addictive disorders who have not been charged or convicted of a violent crime. It requires a county having a community corrections advisory board to formulate a forensic diversion plan, and permits a county without a community corrections advisory board to establish a forensic diversion advisory board to operate a forensic diversion program. Offenders eligible for the program who have been charged with a nonviolent misdemeanor or D felony that can be reduced to a misdemeanor are required to plead guilty before participating in the program. Persons already convicted of a crime that is not a violent crime or a drug dealing offense may participate in the program as a condition of probation. It specifies that offenders convicted of certain crimes may not participate in the forensic diversion plan.
- B. It establishes a Forensic Diversion Study Committee.
- C. It requires the Department of Correction to determine the average daily cost of incarceration and the anticipated future costs of incarceration.
- D. It requires each county sheriff to provide the Department of Correction with the average daily cost of incarceration in a county jail.
- E. It permits a person charged with a drug dealing offense to participate in a drug court program.
- F. It establishes a judicial administration fee and requires court clerks to semiannually distribute to the Auditor of State for deposit in the state General Fund 100% of the judicial administration fee collected. It increases the amount transferred semi-annually for deposit into the Public Defense Fund from \$1,200,000 to \$1,700,000 in FY 2005 and \$2,200,000 in following state fiscal years.
- G. It provides a range of dates under which a person is eligible for release to a community transition program, permits persons convicted of murder to participate in the program, and makes other changes.

- H. It requires training in interacting with persons with mental illness, addictive disorders, mental retardation, and developmental disabilities for law enforcement personnel, jail officers, probation officers, and correctional officers.
- I. It changes the designation of time of community restitution or service for a person convicted of operating a vehicle while intoxicated (OWI) from days to hours.
- J. It provides that a school is entitled to receive juvenile court records for a student of the school under certain circumstances. It provides immunity for improper disclosures of education records made in good faith.
- K. It allows a court to order restitution payments that are a condition of probation to be paid to a probation department that must forward the restitution payments to a victim, victim's family, or victim's estate.
- L. It provides that for purposes of the battery by bodily waste statute, an individual employed by certain courts is a "corrections officer."

Effective Date: July 1, 2004.

Explanation of State Expenditures: Provision A: Forensic Diversion Program -- Under this bill, offenders who are convicted of nonviolent crimes and are found by the court to be addicted to controlled substances or mentally ill could be sentenced to forensic diversion programs rather than state correctional facilities. The offender could remain in the program for a maximum of two years if the crime is a misdemeanor and three years if the crime is a Class D felony. Courts would not be required to establish these programs and criminal defendants would not have the right to be referred to these programs.

These community-based programs would be operated by a community corrections advisory board or a forensic diversion advisory board if a community corrections program does not exist in the county. In developing the program, the board must consider whether any of these programs already exist: certified drug court, court alcohol and drug services programs, or community corrections programs.

If an offender is ordered to participate in an alternative program instead of being incarcerated, the state would save the cost of incarceration. The savings from diverting felony offenders to community programs would be offset by the costs of treatment, supervision in the community, and by the potential failure of treatment for some offenders resulting in a term of incarceration in a Department of Correction (DOC) facility.

The following information is provided as it relates to the fiscal impact of this bill:

- The potential number of Class D felony offenders who are committed to the Department of Correction.
- The duration of the program compared to the sentences of the offenders.
- The potential number of beds saved.
- The new costs associated with establishing these programs at the county level which will offset the avoided costs of incarcerating these offenders.

Potential Number of Offenders:

Based on the offender population in DOC facilities on December 15, 2003, 1,662 Class D felons were in DOC facilities on a first-time commitment. The following shows the general type of crime that these offenders committed.

Class D Felons Committed to DOC as of December 15, 2003, with No Prior History	
<u>General Category</u>	<u>Number of Offenders</u>
Aiding, Attempt and Conspiracy	41
Drug Related	337
Public Order	235
Crimes Against a Person	166
Property Related	459
Vehicle Related	415
Weapons Related	9
	<u>1,662</u>

Existing Programs:

There are two types of programs that have an affiliation with state agencies. Community corrections programs are funded in part by the Department of Correction. Drug courts and alcohol and drug programs are certified by the Indiana Judicial Center. Currently, 82 counties have some combination of drug courts, alcohol and drug programs, or community corrections programs operating. About 94% of the first time Class D offenders were committed from these counties. Ten counties have no program affiliated with the Department of Correction or the Indiana Judicial Center.

Class D Offenders in DOC Facilities on December 15, 2003, with Intake Dates During FY 2003 Committed for Nonforcible Felonies By Felony Class			
	Counties	Offenders	Percent
Counties with Community Corrections Drug Courts or Drug and Alcohol Programs	82	1,556	94%
Counties without Community Corrections Programs Drug Courts or Drug and Alcohol Programs	<u>10</u>	<u>106</u>	6%
Grand Total	<u>92</u>	<u>1,662</u>	

Average Length of Sentence:

Both the sentence length that the court imposes and the length of the program will affect the costs of this new program. The length of stay for offenders ordered to participate in a forensic diversion program could be as long as three years. Once the treatment program ends, the offender would presumably remain on probation for the balance of the offender's sentence.

The following shows the shortest and longest potential length of stays based on the 1,662 offenders who were in DOC facilities on December 15, 2003.

Average Minimum and Maximum Sentence Lengths of Offenders			
<u>Felony Class</u>	Number of <u>Felons</u>	Average Length of Sentence (In Years) Based on	
		<u>Earliest Possible Release Date</u>	<u>Maximum Release Date</u>
D	1,662	1.2	2.1

Illustration of Potential Number of Beds Saved:

When making these projections, the following assumptions are made:

- All counties will have a program that is fully implemented on July 1, 2004.
- All offenders with no prior commitments for a Class D felony to DOC are eligible.
- Half of these offenders have an addiction to a controlled substance or are mentally ill.
- No one placed in the program violates rules and is returned to DOC facilities.

The following illustrates the number of beds that could be saved if half of the offenders with no prior commitment to DOC remain in the local community in a forensic diversion program.

Illustration of Offenders Diverted from DOC Facilities				
Class D Offenders With No Prior Commitment to DOC	Percent With Substance Abuse Addiction	Potential Number of Offenders Who Would Be Diverted	Year when Commitment Begins	Year When Offender Is Released
1,662	50%	831	2005	2006

Based on these offenders, the following table illustrates the potential beds that could be saved over a 12-month period if these offenders are successfully diverted into a community-based system and do not return to the Department of Correction.

In FY 2004, the average cost for housing an offender in a contract bed in a private facility is \$45 per day. Applying this cost, if these offenders never served time in a state correctional facility, the state could save an estimated \$13.6 M.

Illustration of Potential Savings of Prison Beds Through Diversion of Class D Felony Offenders				
<u>Number of Offenders</u>		<u>Per Diem Cost</u>		<u>Savings in Millions</u>
831	x	\$16,425	=	\$13.6 M.

Offsetting Costs

The following series of costs, will offset the savings associated with the cost of prison beds and the associated costs of keeping offenders in DOC facilities:

- Inpatient and outpatient substance abuse treatment.
- New residential facilities constructed.
- More probation officers to supervise offenders who complete the program.

- Offenders failing to complete program or violating rules and returning to DOC.
- Court-ordered assessments of each offender.
- Added responsibilities for the Family and Social Services Administration to monitor and certify the programs.

(1) Inpatient and Outpatient Care - The treatment for an offender will depend on each offender's degree of addiction. The following table illustrates the potential treatment costs assuming that in the first year each offender will participate in each substance abuse program type for the average length of stay.

Treatment Stage	Length of Stay	Cost Per Day	Cost Per Treatment Stage	If 831 Offenders Are Treated Each Year (in Millions)
Detoxification	6	\$194	\$1,164	\$1.0 M.
Residential	92	\$66	\$6,072	\$5.1 M.
Intensive Outpatient	52	\$33	\$1,716	\$1.4 M.
Standard Outpatient	<u>215</u>	\$15	<u>\$3,225</u>	<u>\$2.7 M.</u>
Annual	<u>365</u>		<u>\$12,177</u>	<u>\$10.1 M.</u>
Source: <i>The Cost and Components of Substance Abuse Treatment, July, 2001</i> , Center for Substance Abuse Treatment.				

Offenders successfully completing the first year, will likely need continued counseling, vocational training, and other assistance in providing child care, housing, and transportation. Offenders who relapse may need additional detoxification, counseling, or another treatment component.

(2) Residential Facilities – Depending on the current facilities that are available, more residential facilities may be needed to accommodate the added offenders. The specific costs associated with these facilities will depend on the arrangements made at the local level. Some of these facilities could be built by private providers, but at least some of the costs will need to be absorbed by the Forensic Diversion Program Account.

(3) More Probation Officers – Offenders committed to this program presumably are in intensive supervision during the early stages of the program and serve the remainder of their sentence on probation. As an example, a Class D offender may remain in a residential or institutional setting for several months and be assigned to probation for the remaining portion of the sentence. Depending on how long the court orders that these offenders remain in a program, the courts may need to increase the number of probation officers to supervise these offenders. The need for more probation officers will depend on the backgrounds of the offenders and the degree of supervision that these offenders will need.

(4) Failure to Complete Program and Rules Violations – Offenders will often fail to complete treatment or will commit new crimes. Depending on whether a rule is broken or a new crime is committed, offenders will either have to return to DOC or may be ordered to participate in more intensive and more expensive treatment components. According to a report on substance abuse programs in state correctional facilities, about 55% of the offenders enrolled successfully complete the program. (Others were removed from the program, transferred, or were released from a sentence before completing the program.)

(5) Court-Ordered Assessments of Offenders - The court may request that the controlled substance rehabilitation program established in the county evaluate and examine an individual to determine whether the individual is a drug abuser or alcoholic and would be rehabilitated through treatment. No data exists to indicate how many offenders may be evaluated and examined for intake into the program. Assuming that every new offender is evaluated, based on the average cost of evaluations and medical examinations, the total cost is estimated to be \$215,000 each year.

Costs of Various Evaluations		
Service Type	Average Cost of Service ¹	If 831 Offenders Are Evaluated Each Year
Initial Assessment	\$61.75	\$51,314
Medical Examination	\$80.25	\$66,688
Psychosocial Evaluation	\$115.25	\$95,773
Total	\$258.25	\$214,606
¹ The average cost for each level of care were averaged for this review. Source: <i>The Cost and Components of Substance Abuse Treatment, July 2001</i> , National Evaluation Data Services.		

(6) Certification of Programs – Under the bill, a controlled substance rehabilitation program must be certified by the Division of Mental Health and Addiction of the Family and Social Services Administration. FSSA is likely to incur some added costs to certify programs that do not currently exist. As of February 2004, 51 counties reported having drug and alcohol programs and operating under the provisions of IC 12-23-14 and the regulations of the Judicial Conference of Indiana. The following table represents the status of Indiana's counties with alcohol and drug service programs.

	Counties	Class D offenders	Percent
With Alcohol and Drug Services	51	1,289	78%
In Planning Stage	13	201	12%
No Program	28	172	10%
Totals	92	1,662	

(7) Department of Correction Staff -- DOC staff would likely need to monitor and evaluate the program with other participating agencies. Depending on the involvement of the Department, DOC may need to add more administrative staff.

Provision B: Forensic Diversion Study Committee – This bill establishes a 15-member study committee consisting of four legislators, three lay members, and eight state employees. The committee is to operate under the policies governing study committees adopted by the Legislative Council. Legislative Council resolutions in the past have established budgets for interim study committees ranging from \$6,000 to \$9,000 per interim for committees with fewer than 16 members.

The committee's purpose is to evaluate the effectiveness and appropriateness of forensic diversion programs in Indiana and review the adequacy of funding for these programs. The committee would be charged with submitting a final report before November 1, 2007.

Provision C: Determining Average Daily Costs -- This provision would require DOC to develop a methodology for determining the average daily cost of incarcerating offenders in state facilities and in each county jail. The costs would be provided in a semiannual report to each court with jurisdiction over felony and misdemeanor cases.

Under current law, the State Board of Accounts is responsible for estimating the average daily cost of confining people in certain state correctional facilities (to fulfill IC 11-12-2-9). According to DOC, DOC estimates the average daily cost of incarceration and provides this information to the State Board of Accounts for review. New activities for DOC under the bill may include collecting semiannual average daily cost data from the 92 counties and producing reports for courts with jurisdiction over felony and misdemeanor cases. This may require minimal increases in workload.

The bill also requires that the DOC conduct or contract for an actuarially based study of the projected costs of incarceration including present and anticipated future costs, the effect of credit time, the effect of inmate mortality rates, projected increase in the cost of incarceration, and any other relevant factors. The results of the study would be distributed to the Legislative Council by July 1 of each year. The DOC currently operates a prison population estimating program. Assuming that the information produced by this system is sufficient to make actuarially based studies of project costs of incarceration, fulfilling the reporting requirements under this section may require additional work for the fiscal section of DOC.

Provision F : Public Defense Fund – The Public Defense Fund provides reimbursement of 50% of a county’s certified expenditures for indigent defense services in capital cases and 40% of the certified expenditures for noncapital cases. Noncapital reimbursements may be suspended if the balance of the Fund would be reduced below \$250,000, and reimbursements may be prorated.

The Public Defense Fund receives two sources of funding from the state General Fund, as seen below.

Source	Amount (per transfer)	Timing
IC 33-19-7-5(c) Transfer	\$1.2 M	June 30 and December 31
FY 2004-2005 Biennial Budget	\$2.3 M	January 1 and July 1

Under current law, if the Public Defense Fund is reduced below \$250,000 by reimbursing county certified expenditures, the Public Defense Commission is required to wait for the first transfer of state General Fund monies before reimbursing counties. Subsequently, reimbursement may be prorated to avoid reaching a balance below \$250,000. This bill would eliminate this provision and allow the fund to be reduced to a zero balance if certified claims by counties are equal to or exceed the balance in the fund. If certified claims are greater than the fund balance, the reimbursements would be prorated.

The following scenario illustrates how this bill could affect reimbursements to counties.

As of December 28, 2003, the Public Defense Fund received reimbursement requests totaling \$3.8 M, and the balance in the Fund was \$1.5 M. Under current law, the Public Defense Commission would suspend payments for noncapital cases, wait for a \$1.2 M state General Fund transfer which will occur on December 31, and then reimburse counties for a prorated portion of their request. Since the Fund will have \$2.7 M, with \$2.45 M available for reimbursement, 64% of the total requested amount could be reimbursed.

As proposed by this bill, the Public Defense Commission could reimburse the costs of \$2.7 M, or 71% of the \$3.8 M request.

Counties Affected: The 45 counties with requests pending prior to December 31, 2003, included: Adams, Benton, Blackford, Carroll, Clark, Decatur, Fayette, Floyd, Fountain, Fulton, Greene, Hancock, Henry, Jasper, Jay, Jennings, Knox, Kosciusko, Lake, LaPorte, Madison, Marion, Miami, Monroe, Montgomery, Noble, Ohio, Orange, Parke, Perry, Pulaski, Rush, Scott, Shelby, Spencer, Steuben, Sullivan, Switzerland, Vanderburg, Vermillion, Vigo, Warren, Washington, White, and Whitley.

Provision G : Community Transition Program: Under current law, the length of time for placement in a community transition program is limited to a specific number of days. As proposed, the minimum length of time that an offender can be in a community transition program is 30 days.

Mandatory Days For Participation in Program							
Felony Class	D	C	C *	B	B*	A	A *
Current Law	60	90	120	120	180	120	180
Proposed	30 to 60	30 to 90	30 to 120	30 to 120	30 to 180	30 to 120	30 to 180
* If drug-related offense.							

DOC currently pays the counties that accept offenders into a community transition program \$35 per day for the first 30 days and \$15 per day for each day after the 30th. If offenders participate in fewer days, then DOC could reduce expenditures for the program.

On the other hand, more offenders may participate in the community transition program if they may participate for fewer days. Staff at DOC indicate that some offenders who are completing educational and vocational programs have not been placed in a community transition program because they do not meet the time lines specified under current statute.

DOC indicates that some offenders who have been assigned to the community transition programs refuse to comply with the rules and regulations of the programs. This provision gives DOC the explicit authority to take disciplinary actions against these offenders. Disciplinary actions could include the return to DOC facilities, the loss of credit time, demotion in disciplinary class, and loss of ability to participate in programs in DOC facilities.

As proposed, the administrator of the community transition program may deny credit time to the offender, lengthening the stay of the offender in the program. Depending on the actions taken by the local administrator, lengthening the stay of the offender in the program would increase the cost to DOC at the current rate of \$30 per day for the first 30 days.

Under current law, offenders have the right to refuse to be placed in the program. Refusal may be because they wish to complete a program in the correctional facility or for some other reason. As proposed, the offender is no longer entitled to refuse to be placed in the program but may submit a written statement objecting to placement in the community correction program or may request a delay in commencing the community transition program until after completing a program in a DOC facility. DOC staff indicate that offenders who are in the middle of completing an educational or vocational program may wish to remain in DOC and complete the program instead of being released to the community transition program.

This provision could reduce transportation costs to DOC because several offenders could be taken to the same location if staff can wait up to 6 additional days before transporting these offenders.

Offenders Committed for Murder Would Now Be Eligible – Offenders sentenced to DOC for murder are currently not eligible for the community transition program. This bill makes eligible for assignment into a program, those offenders who have been given a determinate sentence for murder and are to be discharged. The number of offenders sentenced for murder and who might be assigned to the program are not able to be determined. Based on offenders in DOC facilities on December 15, 2003, 209 offenders who are sentenced for murder have earliest possible release dates between FY 2005 and 2009. The following table shows by fiscal year the number of offenders committed for murder who could possibly be released, the counties to which they will be released, and the history of these counties in approving the eligible Class A offenders in community transition programs between FY 2001 and 2003. This table is not intended to predict the number of offenders who will be released to community transition programs.

Offenders Committed for Murder with Earliest Release Dates Between FY 2005 and 2009. Includes County Acceptance Information Based on Prior Acceptance History for Class A Felons.									
Felony Class	Year	Number of Offenders	Number of Counties	To Counties Having Accepted Class A Felons		To Counties Not Accepting Class A Felons		To Counties with No Prior History with Class A Felons	
				Offenders	%	Offenders	%	Offenders	%
Murder	2005	24	13	12	50%	7	29%	5	21%
	2006	36	14	22	61%	9	25%	5	14%
	2007	51	21	25	49%	11	22%	15	29%
	2008	58	19	33	57%	13	22%	12	21%
	2009	40	19	18	45%	12	30%	10	25%
Projected Total		209		110	53%	52	25%	47	22%

Background on Community Transition Program:

Past Activity- DOC reports the following activity for the Community Transition Program (CTP) for the past three fiscal years.

FY	Class A Felons				Class B Felons			
	Offenders Eligible for CTP		Offenders Approved for CTP		Offenders Eligible for CTP		Offenders Approved for CTP	
	Offenders	Counties	Offenders	Counties	Offenders	Counties	Offenders	Counties
2001	97	25	6	4	1,059	79	116	26
2002	92	26	36	7	1,179	85	296	36
2003	146	31	65	12	1,342	84	364	43

FY	Class C Felons				Class D Felons			
	Offenders Eligible for CTP		Offenders Approved for CTP		Offenders Eligible for CTP		Offenders Approved for CTP	
	Offenders	Counties	Offenders	Counties	Offenders	Counties	Offenders	Counties
2001	1,366	79	227	33	698	79	128	33
2002	1,297	90	382	45	746	75	198	40
2003	1,481	90	486	55	868	80	329	51

Potential Activity Based on Offenders in DOC facilities on December 15, 2003- The following table shows offenders with earliest possible release dates between FY 2005 and FY 2009 and the counties from which these offenders have been sentenced. Under current law, offenders are assigned to community transition programs in the counties from which the offender has been sentenced, and not necessarily where the offender lives. The following table shows how many offenders will be released to counties that have accepted felons into a community transition program in the past, the counties that have not accepted an offender into a community transition program, and those that have no history with felons.

Offenders to be Released Based on Earliest Release Date Includes County Acceptance Information Based on Prior Acceptance History									
Felony Class	Year	Number of Offenders	Number of Counties	To Counties that Have Accepted		To Counties that Have Not Accepted		To Counties that Have No Prior History	
				Offenders	%	Offenders	%	Offenders	%
Class A Felons	2005	157	37	104	66%	33	21%	20	13%
	2006	175	39	105	60%	46	26%	24	14%
	2007	191	43	112	59%	53	28%	29	15%
	2008	186	42	108	58%	48	26%	30	16%
	2009	165	40	83	50%	56	34%	26	16%
Class B Felons	2005	1,702	90	1,298	76%	395	23%	9	1%
	2006	1,615	89	1,211	75%	390	24%	14	1%
	2007	1,276	87	945	74%	322	25%	9	1%
	2008	884	83	639	72%	240	27%	5	1%
	2009	558	79	416	75%	138	25%	4	1%
Class C Felons	2005	1,916	88	1,619	84%	295	15%	2	0%
	2006	937	88	759	81%	173	18%	5	1%
	2007	443	74	372	84%	71	16%	0	0%
	2008	200	61	170	85%	29	14%	1	1%
	2009	101	46	83	82%	18	18%	0	0%
Class D Felons	2005	1,054	82	810	77%	236	22%	8	1%
	2006	200	48	153	77%	43	22%	4	2%

Visiting Restrictions – DOC custody staff currently restrict the visitations between child sex offenders and their victims through internal rules. This bill would give DOC the statutory authority to enforce these restrictions.

As of December 15, 2003, the number of offenders in DOC who were housed in DOC facilities for sex offenses against children included the following.

Offenders Housed in DOC Facilities for Sex Crimes Against Children, Dec. 15, 2003	
Child molesting	1,580
Child solicitation	5
Child exploitation	3
Vicarious Sexual Gratification	<u>13</u>
Total Offenders	<u><u>1,601</u></u>

Provision H: Training Requirements for Law Enforcement, Probation and Correction Officers -- This requirement would result in minimal added expenditures. Both the Department of Correction (DOC) and the Law Enforcement Training Board (LETB) would each necessitate funding to create a distance learning training module for employees. Additional money would be needed to modify the module annually. The LETB estimates it will cost \$40,000 to create the module, and \$10,000 annually to modify it. It is assumed that the DOC will need a similar amount. The creation of the training module will reduce training expenditures for counties; any reduction, however, is likely small. The provisions of the bill do not become effective until January 1, 2005.

Law enforcement personnel, jail officers, probation officers, and correctional officers would all receive training in interacting with persons with mental illness, addictive disorders, mental retardation, and developmental disabilities. The training is required of: individuals attending law enforcement training schools; police officers completing in-service training; jail officers undergoing basic training; and those individuals employed under the DOC who interact with the aforementioned populations. Individuals providing the training must be approved by the Secretary of Family and Social Services and the LETB. No additional cost is anticipated by either entity.

Law Enforcement Training Schools: There are four law enforcement training schools in Indiana; an average of 525 individuals graduate annually. Curricula for attendees is equal to 600 hours. It includes 20 hours relating to interacting with persons with mental illness, addictive disorders, mental retardation, and developmental disabilities. This exceeds the 6 hours required by this bill. The LETB is currently working in conjunction with the Commission on Mental Retardation and Developmental Disabilities to ensure that training covers appropriate areas. No additional cost is foreseen for any change that may be found necessary by the two groups.

In-Service Training: Currently, police officers are required to complete 16 hours of in-service training annually. In-service training is available from both the county of employment and the LETB's website. This bill would require police officers to attend an annual course in interacting with individuals with mental illness, addictive disorders, mental retardation, and developmental disabilities. The LETB estimates that it would cost \$40,000 to create a distance learning training module. An additional \$10,000 would be needed annually to modify the module. The training module would ensure that all officers across the state receive the same training. Local law enforcement agencies currently fund training themselves or through grants. The availability of this course through distance learning would reduce the costs to local law enforcement agencies. Additional funding for the course would not have to be secured.

Department of Correction Training: This bill would require all DOC employees to complete a one-time 6-hour training on interacting with individuals with mental illness, addictive disorders, mental retardation, and developmental disabilities. DOC employees currently receive 2.5 to 3 hours of training in working with the aforementioned populations. This training occurs during the completion of preservice academy requirements. The DOC reports that it employs approximately 8,500 individuals that would fall under the requirements of this bill. Currently, DOC employees are required to complete 40 hours of in-service training annually. It is assumed that the requirements of this bill can be incorporated into the 40 hours. It is also assumed that the DOC can institute a distance learning course similar to that which will be offered by the LETB. Thus, in using the estimate of the LETB, it should cost the DOC no more than \$40,000 to create the module, and \$10,000 annually to modify it. It should, however, be noted that the module will only need to cover 3 to 3.5 hours of training (as opposed to the 6 hours required of the LETB). As a result, the cost for creation and modification may be reduced.

Jail Officer Training: An average of 200 new jail officers receive training under the auspice of the LETB annually. Currently, jail officers must complete a 40-hour basic training program. It includes two hours of training in working with individuals with mental illness, addictive disorders, mental retardation, and developmental disabilities. This bill requires six hours of training. The program will be adjusted to replace four hours of current training with the additional four hours required by this bill. No additional cost is anticipated.

Judicial Conference of Indiana: The Judicial Conference of Indiana reports that it can incorporate the requirements of this bill into current appropriations. It foresees no additional cost to work in conjunction with the Division of Mental Health and Addiction and the Division of Disability, Aging, and Rehabilitative

Services to provide the probation department with training and technical assistance concerning mental illness, addictive disorders, mental retardation, and developmental disabilities. Note: Provision H does not become effective until January 1, 2005.

Provision L: Battery by Bodily Waste – Under current law, the penalties for attacking a corrections officer with bodily waste are greater than the penalties for attacking a person with bodily waste. This bill would increase the penalties for attacks against employees of circuit, superior, county, probate, city, or town courts.

The following shows the type of crime if the action was against another person as opposed to a corrections officer.

<u>Action</u>	<u>Action Taken Against a</u>		<u>Added Time in Prison</u>
	<u>Person</u>	<u>Corrections Officer</u>	
Placing blood or another body fluid or waste in a rude insolent or angry manner	Class A misdemeanor	Class D felony	Six months to 3 years
If the blood, bodily fluid, or waste was infected with hepatitis B, HIV, or tuberculosis	Class D felony	Class C felony	1.5 to 5 years
If transmission of hepatitis B or tuberculosis occurs because of the act	Class C felony	Class B felony	4 to 12 years
If transmission of HIV occurs because of the act	Class B felony	Class A felony	14 to 30 years

The average expenditure to house an adult offender was \$26,825 in FY 2002. Assuming offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. However, any additional expenditures are likely to be small.

Explanation of State Revenues: Provision F: Public Defense Fund – A Judicial Administration Fee would be charged on all civil, small claims, and probate filings, all criminal cases where a person is convicted of an offense, all juvenile cases, and all cases where a person is found to have violated an infraction or an ordinance. The fee would be \$1 for the period between July 1, 2004, and ending June 30, 2005. The fee would increase to \$2 beginning July 1, 2005.

For FY 2005, the \$1 fee would generate new revenue of \$1.05 M. For FY 2006 and each subsequent year, the fee would generate new revenue of \$2.1 M.

The proceeds from this fee would be initially deposited in the state General Fund. But twice a year, on June 30th and December 31st, a transfer of money would be made to the Public Defense Fund. Under current law, the amount that is transferred every six months is \$1.2 M. As proposed, the amount that would be transferred would be \$1.7 M on December 31, 2004, and June 30, 2005. For each six-month period after June 30, 2005, \$2.2 M would be transferred from the state General Fund to the Public Defense Fund.

	Judicial Administration Fee	New Revenue Deposited in State General Fund	Added Revenue Transferred to Public Defense Fund	Net Effect on State General Fund
July 1 to December 31, 2004	\$1	\$528,494	\$500,000	\$28,494
January 1 to June 30, 2005	\$1	\$528,494	\$500,000	\$28,494
July 1 to December 31, 2005	\$2	\$1,056,987	\$1,000,000	\$56,987
January 1 to June 30, 2006	\$2	\$1,056,987	\$1,000,000	\$56,987

The following table shows the estimated new revenue that is generated for 12 months based on a \$1 fee.

	Trial Courts	City and Town Courts	Marion County Small Claims Courts	Totals
Felonies and Misdemeanors	\$51,868	\$21,086		\$72,954
Infractions	\$378,449	\$132,470		\$510,918
Ordinance Violations	\$51,636	\$12,707		\$64,343
Civil and Probate	\$149,567	\$11,258		\$160,825
Juvenile	\$13,521			\$13,521
Small Claims	<u>\$167,855</u>		<u>\$66,570</u>	<u>\$234,425</u>
Totals	<u>\$812,896</u>	<u>\$177,521</u>	<u>\$66,570</u>	<u>\$1,056,987</u>

The following table shows the amount of new revenue generated for 12 months based on a \$2 fee.

	Trial Courts	City and Town Courts	Marion County Small Claims Courts	Totals
Felonies and Misdemeanors	\$103,736	\$42,172		\$145,909
Infractions	\$756,898	\$264,939		\$1,021,837
Ordinance Violations	\$103,272	\$25,414		\$128,686
Civil and Probate	\$299,134	\$22,516		\$321,650
Juvenile	\$27,043			\$27,043
Small Claims	<u>\$335,709</u>		<u>\$133,141</u>	<u>\$468,850</u>
Totals	<u>\$1,625,791</u>	<u>\$355,042</u>	<u>\$133,141</u>	<u>\$2,113,974</u>

Provision K: Payment of Restitution – Under current law, a court can order a person who is on probation to pay restitution to a victim of a crime that was conducted by the person on probation. The money paid by the person can be either paid to the Criminal Justice Institute of Indiana or to the clerk of the circuit court. This bill would allow the person to pay the restitution to the probation department to be forwarded to the victim of the crime, the victim's estate, or the family of a victim who is deceased. Depending on the decision of the court, this bill could transfer the workload for this task from either the Criminal Justice Institute or the clerk of the circuit court to the probation department under that court.

During CY 2002, trial courts in 67 counties and courts in 11 cities reported receiving \$6.59 M in restitution from probationers to be forwarded to aggrieved parties.

Restitution (In Millions) Collected From Offenders on Probation By Calendar Year				
<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
\$5.49	\$5.72	\$6.81	\$7.17	\$6.59

The Indiana Criminal Justice Institute reports the following revenues that have been collected for victim restitution and deposited in the Victims Compensation Fund.

Court-Ordered Restitution Deposited in Violent Crime Victims Compensation Fund By Fiscal Year				
<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
\$45,935	\$32,214	\$26,423	\$32,203	\$22,435

Explanation of Local Expenditures: Provision A: Forensic Diversion Program -- The prison population data from December 15, 2003, includes the county from which these offenders were sentenced. Based on this data, the number of offenders who could potentially be in a program in each county are estimated. The following table shows that 66 of the counties will retain 10 or fewer offenders that would have been committed to DOC from their counties.

How Felony Offenders Might Be Distributed				
Number of Felons Who Would Remain in County	Counties With:			
	Community Corrections, Drug Court, or Alcohol and Drug Services	A Program In Planning Stages	No Program Affiliated with a State Agency	Total Counties
5 or less	44	2	7	53
6 to 10	12		1	13
11 to 20	8	1	1	10
21 to 49	8			8
50 to 99	2			2
100 or more	<u>1</u>	<u> </u>	<u> </u>	<u>1</u>
Total	75	3	9	87

Note: There were 5 counties without Class D offenders in this group

Depending on the number of offenders, counties may wish to consolidate operations to spread costs over a larger number of offenders.

Misdemeanants: Offenders who are charged with a misdemeanor may also participate in the program. There is limited information on the number of misdemeanants who are in county jails. Presumably, the majority of these misdemeanants are incarcerated for OWI.

Commitment Procedures: Any additional work for the court or any costs to the county will depend on how often the court wishes to commit participants in a forensic diversion program to facilities operated by the Division of Mental Health and Addiction and whether the participant is willing to be committed. The costs for court time

will be minimal when a person in a forensic diversion program volunteers for treatment in a state facility. However, the costs to the court would likely be greater if the person must be committed for involuntary treatment since the person would be entitled to legal counsel that would be paid by the courts (IC 12-6-2).

Provision D: Determining Average Daily Costs -- This provision requires courts to include the total costs of incarceration (the number of days for which a prisoner is sentenced times the average daily cost of incarceration) in the sentencing order. To the extent that this provision could require additional preparation time or form redesign, administrative costs could minimally increase.

The bill also requires county sheriffs to provide DOC with the average daily cost of incarcerating a prisoner in their county jails. Statute requires a sheriff to base per diem fees on average daily cost, but it does not require sheriffs to collect cost information. For the most part, sheriffs do not collect or report average daily cost information. In order to report this information semiannually on January 31 and June 30, sheriffs may incur additional costs for accounting services. The amount of the additional costs will depend on information currently available in the individual county.

Background: According to the Indiana Sheriffs' Association, information on average daily cost was compiled in a voluntary survey conducted several years ago. The purpose of the survey was to show the difference between average daily cost and the per diem reimbursement counties receive from the state for housing a state prisoner. The survey showed great variation among counties, with an average cost of about \$44 per day.

Provision E : Allowing Drug Dealing Offenses to be Administered by Drug Courts – Currently, 13 counties operate drug courts in Indiana, and five additional courts are in the planning stage. The following counties currently operate drug courts: Allen, Clark, Dearborn/Ohio, Lake, Johnson, Madison, Marion, Monroe, St. Joseph, Tippecanoe, Vanderburgh, and Vigo.

The following counties have drug courts in planning stages: Delaware, Grant, Howard, Lawrence, and Warrick.

If these courts are authorized to supervise defendants who have been charged with drug dealing, it is possible that more offenders may be able to remain in the communities.

Provision F : Reimbursements from Public Defense Fund – This bill increases the amount of funds available in the Public Defense Fund. The Public Defense Fund reimburses counties for the costs of providing legal defense for indigent criminal defendants. The fund will reimburse counties for 50% of the qualified costs in death penalty cases and 40% in felony cases that are not death penalty cases.

Background: Public Defense Fund expenditures for partially reimbursing counties for the costs of capital cases are reported for each fiscal year between 1998 and 2003 in the following table.

Reimbursements for Capital Cases by Fiscal Year					
1998	1999	2000	2001	2002	2003
\$799,450	\$526,512	\$378,209	\$712,055	\$473,317	\$413,805

Reimbursements to counties for qualified noncapital cases as reported for FY 1998 through 2003 are provided in the following table.

Reimbursements (in Millions) for Noncapital Cases By Fiscal Year					
<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
\$1.03	\$2.18	\$3.30	\$3.66	\$4.86	\$5.22

Provision G: Community Transition Program – Counties with community transition programs currently receive \$35 per day for the first 30 days on the program and \$15 for each day after the first 30 days.

Provision I: Sentencing for OWI – If a work day is equivalent to six hours, there is no change in the amount of community restitution or service required.

Provision J: Disclosure of Juvenile Records – The impact to local expenditures should be minimal although it could require additional administrative time for schools to draft a written request for juvenile records and the juvenile court to issue orders of confidentiality.

School corporations would be permitted by law to transfer the records to another school corporation (or any other person with consent of the student's parent, guardian, or custodian). This provision could increase the administrative responsibilities of the sending school corporation to copy the student's juvenile records and transfer them to the receiving school corporation.

The juvenile court would be required to send notice of the release of a student's juvenile record to the student and the student's parents, guardian, or custodian should the records be released to the student's school.

Explanation of Local Revenues: Provision A: Forensic Diversion Program: The Department of Correction would be responsible for disbursing funds from the Forensic Diversion Account to counties that comply with the provisions of the bill.

State Agencies Affected: Department of Correction, Family and Social Services Administration; Public Defender Commission; Law Enforcement Training Board; Board of Directors of the Judicial Conference of Indiana.

Local Agencies Affected: Trial Courts; Counties; Prosecuting Attorneys; Community Corrections Agencies; Counties receiving Public Defense Fund reimbursements

Information Sources: *Provision A – Indiana Judicial Report 2002; Indiana Probation Report 2002; Department of Correction Substance Abuse Program Accomplishments 2002; United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, ADSS Cost Study: Costs of Substance Abuse Treatment in the Specialty Sector; National Evaluation Data Services, The Cost and Components of Substance Abuse Treatment, July 2001, <http://www.in.gov/judiciary/center/cadp/docs/directory0104.doc>*

Scott Mellinger, Law Enforcement Training Board, 837-3255; Kristen Schunk, Family and Social Services Administration; Randy Koester, Department of Correction, 234-1693; Kathy Lisby, Department of Correction, 232-1926; Criminal Justice Institute, *2002 Indiana Probation Report*.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.